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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 PREPAREME AMERICA, LLC,

9 Plaintiff,

10 v.

11 SURVIVAL PREP WAREHOUSE, LLC,  
12 et al.,

13 Defendants,

14 v.

15 CHAD E. ALLEN,

16 Third-Party Defendant.

C17-359 TSZ

MINUTE ORDER

17 The following Minute Order is made by direction of the Court, the Honorable  
18 Thomas S. Zilly, United States District Judge:







19 (1) Plaintiff's motion for leave to amend, docket no. 37, is GRANTED.  
20 Plaintiff shall electronically file its Amended Complaint within seven (7) days of the date  
21 of this Minute Order. Notwithstanding Federal Rule of Civil Procedure 15(a)(3), any  
22 responsive motion or pleading shall be filed within twenty-one (21) days of the date the  
23 Amended Complaint is filed.

(2) Plaintiff's motion for a preliminary injunction, docket no. 33, is DENIED  
without prejudice.<sup>1</sup> Plaintiff's motion is premised on the theory that, by using Amazon  
Standard Identification Numbers ("ASINs") associated with plaintiff's products and/or








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<sup>1</sup> Plaintiff's request for oral argument, docket no. 55, is DENIED.

federally registered trademark PERFECT SURVIVAL KIT, defendant Survival Prep Warehouse, LLC (“Survival Prep”) is engaged in infringement. For support, plaintiff has submitted several Amazon product-detail pages,<sup>2</sup> which may be summarized as follows:

Ex.	Date of Page	Product Name	Ships From and Sold By	Product Image
I	09-28-17	<a href="#">SurvivalKitsOnline</a> 4 Person Perfect Survival Kit Deluxe	Get_Prepared_For_Disaster	
J	10-11-17	<a href="#">SurvivalKitsOnline</a> 4 Person Perfect Survival Kit Deluxe	Survival Prep Warehouse	
K	10-18-17	<a href="#">Survival Prep Warehouse</a> 4 Person Perfect Survival Kit Deluxe	Survival Prep Warehouse	
L	10-24-17	<a href="#">Survival Prep Warehouse</a> 4 Person Survival Kit Deluxe	Survival Prep Warehouse	
M	09-28-17	4 Person Perfect Survival Kit Deluxe <a href="#">by SurvivalKitsOnline</a>	not shown	
N	09-28-17	<a href="#">Perfect Survival Kit</a> Deluxe 2-Person Perfect Survival Kit	Get_Prepared_For_Disaster	

<sup>2</sup> Exhibits I-W to Matesky Decl. (docket nos. 34-1 – 34-3).

Ex.	Date of Page	Product Name	Ships From and Sold By	Product Image
O	10-19-17	<a href="#">SurvivalKitsOnline</a> Deluxe 2-Person Perfect Survival Kit	Survival Prep Warehouse	
P	10-24-17	<a href="#">Survival Prep Warehouse</a> Deluxe 2-Person Survival Kit	Survival Prep Warehouse	
Q	09-28-17	Deluxe 2-Person Perfect Survival Kit <a href="#">by Perfect Survival Kit</a>	not shown	
R	09-28-17	<a href="#">Perfect Survival Kit</a> Earthquake Kit, The Small Perfect Survival Kit	Get_Prepared_For_Disaster	
S	10-19-17	<a href="#">Perfect Survival Kit</a> Earthquake Kit, The Small Perfect Survival Kit	Survival Prep Warehouse	
T	10-24-17	<a href="#">Perfect Survival Kit</a> Earthquake Kit, The Small Perfect Survival Kit	Survival Prep Warehouse	
U	01-23-17	4 Person Perfect Survival Kit Deluxe <a href="#">by Perfect Survival Kit</a>	Get_Prepared_For_Disaster	

Ex.	Date of Page	Product Name	Ships From and Sold By	Product Image
V	10-20-17	<a href="#">Survival Prep Warehouse 4 Person Kit</a>	Survival Prep Warehouse	
W	10-20-17	<a href="#">Survival Prep Warehouse 2 Person Deluxe Survival Kit</a>	Survival Prep Warehouse	

Exhibits I, N, R, and U indicate that an entity other than plaintiff or Survival Prep (*i.e.*, Get\_Prepared\_For\_Disaster) is offering or has offered for sale three different products styled as a “Perfect Survival Kit,” namely a 4-person, a 2-person, and a small or earthquake kit. Exhibits M and Q are not linked in any way to Survival Prep. The remaining exhibits show that, although Survival Prep’s earlier product descriptions and images included the term “PERFECT,” which is the only portion of the trademark as to which plaintiff might claim an exclusive right, *see* Ex. A to Compl. (docket no. 1-1), more recent Amazon pages omit the word. *See* Exs. J-L, O-P, & V-W (docket nos. 34-2 & 34-3). Such evidence does not establish *ongoing* trademark infringement (or a related *continuing* violation of Washington’s Consumer Protection Act (“CPA”)), which is a threshold for any preliminary injunctive relief.<sup>3</sup> *See Mayfield v. United States*, 599 F.3d 964, 970-71 (9th Cir. 2010) (to obtain injunctive relief, a movant must show that its injury is ongoing or likely to recur). To the extent plaintiff alleges that Survival Prep’s use of the ASINs at issue precludes plaintiff from competing in the market or falsely designates Survival Prep as the origin of goods associated with plaintiff or its trademark, plaintiff has not yet pleaded such claims, and the Court cannot conclude that plaintiff has shown a likelihood of success on, or serious questions going to, the merits of legal theories not presently part of this litigation.<sup>4</sup> *See Winter v. Natural Res. Def. Council*,

<sup>3</sup> The Court makes no ruling concerning whether Survival Prep’s use of the ASINs at issue, prior to the removal in October 2017 of the term “PERFECT,” constituted trademark infringement, a CPA violation, or a tort for which plaintiff might have a remedy at law.

<sup>4</sup> Plaintiff’s reliance on *Coca-Cola Co. v. Overland, Inc.*, 692 F.2d 1250 (9th Cir. 1982), is misplaced. The case is both procedurally and factually distinguishable. It involved summary judgment, as opposed to preliminary injunctive relief, and it concerned a restaurant’s *ongoing* substitution of Pepsi-Cola without oral notice in response to customers’ specific requests for Coca-Cola or Coke.

1 Inc., 555 U.S. 7, 20 (2008); Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127,  
2 1131-35 (9th Cir. 2011).

3 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of  
4 record.

5 Dated this 27th day of November, 2017.

6 William M. McCool  
7 Clerk

8 s/Karen Dews  
9 Deputy Clerk